

## **SOUTH TAHOE EXPORT PIPELINE PROJECT**

### **QUESTIONS AND ANSWERS**

**Q:** Why is the EPA delaying the export pipeline project?

**A:** EPA supports the project and would like to see it completed as rapidly as possible. EPA has exercised a considerable degree of flexibility, within the framework of applicable policies, regulations and Congressional instructions, to devise a grant arrangement as favorable for the District as possible. We have repeatedly discussed this approach with the District and are ready to implement it as soon as the District indicates a willingness to accept it. Our approach would provide the District a substantial initial payment of Federal funds within the next few months that it could use to pay off most, if not all, of its short term loan; pay for all of the construction planned for the 1999 construction season; and pay a portion of the construction planned for the 2000 construction season.

**Q:** Why is EPA trying to impose extraneous conditions on South Tahoe's grants?

**A:** The South Tahoe grants are two of the 172 special project grants Congress included in our FY 98 and 99 Appropriation Acts. For the last several years, Congress has instructed us that we are to obtain a local match for these special project grants consistent with past practice. Our practice, as specified by Congress in the FY 95 appropriations and as described in annual guidance that has been submitted for Congressional review, has been to require a local match of 45%. Furthermore, these special project grants are governed by the Agency's general grant regulations. Our regulations, among other things, prohibit us from sharing in costs incurred prior to grant award. This requirement is based on government-wide policy as expressed in OMB Circular A-87. EPA has been trying to work with the District to apply the requirements as flexibly as possible.

**Q:** Why does EPA refuse to give the District credit for the nearly \$22 million it has already invested in the project?

**A:** EPA recognizes and applauds the actions the District has already taken to address its environmental responsibilities and support its continued efforts to complete the replacement of the export pipeline. However, we believe that there are two important policy principles involved. One, EPA believes that these Federal grants for water and wastewater infrastructure construction should be used to the extent possible to generate new construction of benefit to the environment and not to provide economic relief to selected communities for past efforts. Two, the responsibility of local governments, including South Tahoe, to meet State and Federal environmental requirements is not a function of the availability of Federal grants. South Tahoe needs to develop a viable financial plan to complete the export pipeline that is not dependent on hoped-for future Congressional earmarks or a burdensome attempt to finance major capital investment out of current income over a short period of time.

**Q:** Didn't the President promise that the Federal government would pay for the rest of the export pipeline?

**A:** The President and the Vice President did visit Lake Tahoe in July of 1997. The President also issued Executive Order 13057 which directed certain Federal agencies to establish a Federal Interagency Partnership on the Lake Tahoe Ecosystem and specified certain Federal actions to be taken in the areas of water quality, forest ecosystem restoration and transportation. Among these commitments, the President promised to work with Congress to provide funding for the export pipeline. The Partnership is working actively and the delivery of the agreed-upon commitments is essentially on track. EPA is fully supportive of these efforts and has met its commitments, including the award of the FY 98 grant on July 16, 1998. The Federal commitment to Lake Tahoe does not mean that South Tahoe is relieved from any obligation to make further efforts in its own behalf or that it is to be exempted from applicable regulatory and Congressional requirements.

**Q:** EPA has granted deviations for 21 recipients of special project grants since 1994. Why won't it grant a deviation to the District?

**A:** EPA has granted deviations from the regulatory prohibition against allowing pre-award costs. However, these deviations have been limited to pre-award costs incurred since the date of the appropriation, the beginning of the fiscal year in which the funds were appropriated, or other circumstances where the recipient had assurance of the grant funds and could reasonably begin work in anticipation of the grant. The District's request is very different in that it asks us to allow costs incurred between 1990 and 1996, a time well before the grant funds were appropriated or the Presidential Forum held. Such a deviation would represent a significant departure from our precedents. Many communities have done a great deal of construction in the past, and accepting these costs on an unlimited basis would turn the special grants into a reimbursement program without providing any new environmental benefits. We are, however, ready to grant the District a deviation similar to deviations we have granted in other cases, which would allow pre-award costs since October 1, 1997, and associated planning and design costs.

**Q:** EPA has the authority to lower or waive the local match and has done so 22 special project grants recipients. Why won't it lower or waive the requirement for South Tahoe?

**A:** We have lowered the local match requirement essentially on two grounds. First, we have lowered the local match where the recipient can demonstrate economic hardship. South Tahoe has tried to make such a demonstration. While user charges in the District are high, they do not reach the criteria that we use to define economic hardship. Second, we have lowered the local share in cases where it can be documented that the project has been clearly defined and the costs of the defined project are less than enough to absorb a Federal grant at the 55% level. To require a local match in such cases would be to require work that was neither planned nor necessary to complete the project. This is not the case in South Tahoe. The completion of the export pipeline is estimated to cost another \$35 million compared with the \$9.65 million appropriated to date. The District can undertake significant work within the scope of the defined project to meet the local match.

**Q:** Why is EPA reneging on earlier promises and assurances given to the District?

**A:** It is true that EPA staff did provide assurances to the District that its requested deviation would be granted. This advice was based on a lack of understanding of applicable requirements and precedents and we regret the misinformation. Nevertheless, we do not believe that we can exceed the Congressional instructions or our regulatory requirements. However, we have tried to structure a payment plan to provide South Tahoe a substantial initial payment that it can use to retire the grant anticipation loan it has taken out. From another perspective, our poor advice has not critically affected South Tahoe's interests. A viable plan to finance the remainder of project still needs to be developed, and possible future Federal grants can still be used whether costs from 1990 to 1996 are factored in or not.